

BRS RAILROAD EQUIPMENT ASSOCIATES  
3333 Electric Avenue  
Port Huron, Michigan 48060

RECORDATION NO. 8306-A Filed & Recorded

JAN 5 1977 - 11 50 AM

INTERSTATE COMMERCE COMMISSION

Secretary,  
Interstate Commerce Commission  
Washington 25, D. C.

January 3, 1977

7-005A016

Date JAN 5 1977

Fee \$ 16-

FEE OPERATION BR.  
I.C.C.

JAN 5 11 43 AM '77

RECEIVED

Dear Sir:

ICC Washington, D. C.

We enclose herewith for filing with the Commission, pursuant to Section 20c of the Interstate Commerce Act and the regulations thereunder, five (5) original counterparts of the Supplemental Chattel Mortgage dated October 1, 1976, which supplements and amends the Mortgage dated April 23, 1976, and was filed with the Commission on April 28, 1976 and assigned recordation number 8306.

This Supplemental Chattel Mortgage is between the following parties:

- (a) Mortgagor: BRS Railroad Equipment Associates  
3333 Electric Avenue  
Port Huron, Michigan 48060
- (b) Mortgagee: Michigan National Bank  
Port Huron, Michigan 48060

The equipment covered by the above document is 23 70 ton 85 foot Trailer Flat Cars numbered CNW 52600 to 52622, inclusive.

No prior recordation of the above document has been made.

We request that three counterparts bearing the Commission's recordation data be returned to the undersigned. Our check in the sum of \$ 10.00 to the Commission is enclosed.

INTERSTATE  
COMMERCE COMMISSION  
RECEIVED

CA JAN 5 1977

ADMINISTRATIVE SERVICES  
MAIL UNIT

ALS/kh

Sincerely,

BRS RAILROAD EQUIPMENT ASSOCIATES

By: Allen L. Stevens  
Allen L. Stevens, Partner

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**1/25/77**

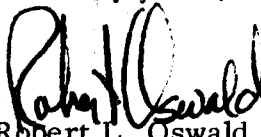
**OFFICE OF THE SECRETARY**

**Allen L. Stevens**  
**BRS Railroad Equipment Associates**  
**3333 Electric Avenue**  
**Port Huron, Michigan 48060**

**Dear Sir:**

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on **1/5/77** at **11:50am**,  
and assigned recordation number(s) **8306-A**

Sincerely yours,

  
Robert L. Oswald  
Secretary

Enclosure(s)

SE-30  
(5/76)

RECORDATION NO. 8306-A  
JAN 5 1977 11 50 AM  
INTERSTATE COMMERCE COMMISSION

SUPPLEMENTAL CHATTEL MORTGAGE

This SUPPLEMENTAL CHATTEL MORTGAGE dated as of OCT - 1 1976, 1976, from BRS RAILROAD EQUIPMENT ASSOCIATES, a Michigan co-partnership, having its principal offices and place of business in the City of Port Huron, Michigan (hereinafter called the "Mortgagor") to MICHIGAN NATIONAL BANK, incorporated under the laws of the United States, having its principal offices in the City of Port Huron, Michigan (hereinafter called the "Mortgagee").

WHEREAS, the Mortgagor has heretofore executed and delivered to the Mortgagee an instrument entitled "Mortgage on Flat Cars" dated April 23, 1976 (hereinafter called "Original Mortgage") covering certain railroad equipment of the Mortgagor to secure its promissory note (hereinafter called "Original Note") issued to evidence a loan made by the Mortgagee to the Mortgagor on said date in the principal amount of \$110,000, all as provided in the Original Mortgage;

WHEREAS, the Original Mortgage has been duly recorded pursuant to Section 20c of the Interstate Commerce Act on April 28, 1976 and has been assigned recordation number 8306 by the Interstate Commerce Commission; and,

WHEREAS, the Mortgagor and Mortgagee desire to have the Mortgagor execute and deliver this Supplemental Chattel Mortgage for the purpose of amending and restating in its entirety the Original Mortgage and of confirming the lien of the Original Mortgage; and,

WHEREAS, the Mortgagor is simultaneously with this execution of of this Supplemental Mortgage executing and delivering to Mortgagee a promissory note dated of even date herewith (hereinafter called the "Supplemental Note") for the purpose of amending and restating in its entirety the terms of the Original Note.

NOW, THIS INSTRUMENT WITNESSETH, that to secure the payment of the loan made and the Supplemental Note as aforesaid and for the purpose of confirming the lien of the Original Mortgage, the Mortgagor does hereby grant, bargain, sell, transfer, convey and mortgage unto the Mortgagee, its successors and assigns, and gives to the Mortgagee a security interest in the following described property (hereinafter collectively called the "Mortgaged Property"), to wit:

Twenty-three (23) ACF Highway Trailer Flat Cars of 85 foot length and 70 ton capacity

Serial Numbers: Chicago and North Western Transportation Company numbers 52600 to 52622, inclusive.

(Previously serial numbers RTX 8500 to 8511 and 8513 to 8520 and 8522 to 8524 inclusive.)

together with all fittings, appliances, equipment and accessories from time to time thereto belonging, owned by the Mortgagor and installed in or connected with the said Mortgaged Property.

Together with all substitutions, replacements and renewals of the property above described and all property which shall hereafter become physically attached to or incorporated in the property above described whether the same are now owned by the Mortgagor or shall hereafter be acquired by it.

TO HAVE AND TO HOLD all in singular the property aforesaid unto the Mortgagee, its successors and assigns, as security as aforesaid and for the uses and purposes, and subject to the covenants, agreements, and conditions hereinafter set forth.

NOW, THEREFORE, IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto and their respective successors and assigns that the terms upon which the Mortgaged Property shall be held, used and operated are as follows:

#### ARTICLE I

##### COVENANTS OF THE MORTGAGOR

The Mortgagor covenants, agrees and warrants as hereinafter in this Article set forth:

Section 1.1 Warranty of Title. At the time of the execution and delivery of the Original Mortgage and at all times since then and at the time of the execution and delivery of this instrument, the Mortgagor owns and is possessed of the Mortgaged Property described above subject to no lien, charge, encumbrance or security interest other than the security interest created by the Original Mortgage and the Mortgagor at the time of the execution and delivery of the Original Mortgage and at the time of the execution and delivery of this instrument has full power and authority to grant, bargain, sell, transfer, convey and mortgage and give a security interest in said railroad equipment in the manner and form aforesaid.

The Mortgagor hereby does and will forever warrant and defend the title to and possession of the Mortgaged Property against the claims and demands of all persons whomsoever.

Section 1.2 Recording. The Mortgagor will bear the expense of and be responsible for recording and re-recording, and filing and refiling this Supplemental Mortgage and such other instruments from time to time as may be requested by the Mortgagee in all such jurisdictions and offices as the Mortgagee shall from time to time require in order that (a) the lien of the Original Mortgage as a first direct lien on all of the Mortgaged Property, (b) the security for the Supplemental Note, and (c) the rights and remedies of the Mortgagee, may be established, confirmed, maintained and protected; and the Mortgagor will furnish to the Mortgagee evidence satisfactory to the Mortgagee of every such recording and filing.

Section 1.3 To Maintain Priority of Lien. The Original Mortgage, as amended by this Supplemental Mortgage, always will be kept a first direct lien upon the Mortgaged Property as from time to time constituted; and the Mortgagor will not create or suffer to be created any lien or charge upon the Mortgaged Property or any part thereof of proceeds thereof; and the Mortgagor will from time to time pay or cause to be paid as they become due and payable all taxes, assessments, governmental charges, and demurrage or freight charges levied or assessed or imposed upon the Mortgaged Property or any part thereof so that the lien of and

security interest created by the Original Mortgage, as amended by this Supplemental Mortgage, shall at all times be wholly preserved at the cost of the Mortgagor and without expense to the Mortgagee.

Section 1.4 Maintenance and Use of Mortgaged Property. The Mortgagor will at all times maintain, perserve and keep at its own cost and expense all of the Mortgaged Property as from time to time constituted and every part thereof in good order and repair.

The Mortgagor shall promptly notify the Mortgagee of any flat car included in the Mortgaged Property becoming worn-out, lost, stolen, destroyed or rendered unfit for use. The Mortgagor will replace, at its own expense, each flat car included in the Mortgaged Property that may be retired (whether by wearing-out, loss, theft, or destruction or other cause) or may be anywise rendered unfit for use with another flat car of substantially the same character and of as good material and construction as, and of a fair value at least equal to the fair value immediately prior to such event of the flat car so retired or rendered unfit for use.

Nothing in this Section shall obligate the Mortgagor to replace any flat car which has been worn-out, lost, stolen, destroyed or rendered unfit for use if within 90 days thereafter, if such flat car was insured, or within 30 days thereafter if such flat car was not insured, there shall be paid to the Mortgagee the proceeds of insurance or other moneys in an amount at least equal to the reasonable market value as determined by the Mortgagee of such flat car. All sums so paid to the Mortgagee pursuant to this paragraph shall be applied by the Mortgagee to the prepayment of the principal of the Supplemental Note together with all accrued interest on the principal so prepaid such principal payment being applied to the then last maturing installment or installments of principal of the Supplemental Note.

Section 1.5 Identifying Marks. The Mortgagor will cause each flat car which is part of the Mortgaged Property to be kept numbered with the serial number set forth above and will keep and maintain plainly, distinctly and conspicuously marked on each side of each flat car in letters not less than 1/2 inch (1/2") in height the words

"Ownership Subject to a Security Agreement filed with the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Mortgagee with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Mortgagee's security interest in such flat car under the Original Mortgage, as amended by this Supplemental Mortgage. The Mortgagor will not place any such flat car in operation until such words have been so marked and will replace promptly any such marks which may be removed, defaced, or destroyed. The Mortgagor will not change the serial number of any flat car unless and until (a) a statement of new number or numbers to be substituted therefor shall have been filed with the Mortgagee and duly filed and recorded by the Mortgagor in all public offices where this Supplemental Mortgage shall have been filed and recorded, and (b) the Mortgagor shall have furnished the Mortgagee an opinion of counsel to such effect. The flat cars may be lettered with the names or initials or other insignia consistently used by the Mortgagor or its lessees on railroad equipment of the same or similar type.

Section 1.6 To Insure. The Mortgagor shall maintain or cause to be maintained insurance upon all of the Mortgaged Property in such responsible companies and in such amounts and against such risks as are satisfactory to the Mortgagee.

All policies and other contracts for such insurance shall provide that the proceeds of such insurance shall be payable to the Mortgagee by means of a standard mortgagee clause and each such policy or other contract shall contain an agreement by the insurer that notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force to the benefit of the Mortgagee for at least 30 days after written notice to the Mortgagee of the cancellation. All proceeds of insurance paid to the Mortgagee in accordance with this Section shall be applied by the Mortgagee to the prepayment of principal of the Supplemental Note together with all accrued interest on the principal so prepaid, such payments being applied to the then last maturing installment or installments of principal of said such Supplemental Note.

Without limiting the generality of the foregoing, the Mortgagor shall keep or cause to be kept in full force and effect public liability and property damage liability insurance relating to the Mortgaged Property insuring the Mortgagor and the Mortgagee as their interest may appear against claims for death or injury to persons and loss of or damage to property in connection with the possession, use or operation of the Mortgaged Property.

The Mortgagor shall provide the Mortgagee with certificates of insurance evidencing such liability insurance together with copies of all policies for such insurance as requested by the Mortgagee.

Section 1.7 Inspection by Mortgagee. The Mortgagor will at any and all times, upon request of the Mortgagee, permit the Mortgagee by its representatives to inspect the Mortgaged Property and the books of account, records, reports, and other papers of the Mortgagor and will afford and procure a reasonable opportunity to make any such inspection and the Mortgagor will furnish the Mortgagee any and all such other information as the Mortgagee may reasonably request with respect to the affairs of the Mortgagor and the Mortgaged Property.

## ARTICLE II

### Events of Default

Section 2.1 Events of Default. If any of the following "Events of Default" shall occur and shall not have been remedied: (1) If any representation or warranty made by the Mortgagor in the Original Mortgage or this Supplemental Mortgage shall prove to have been untrue in any material respect and shall not be remedied within 10 days after written notice thereof to the Mortgagor by the Mortgagee; (2) If default shall be made by the Mortgagor in payment of the principal of or interest on the Supplemental Note when the same shall become due and payable; (3) If the Mortgagor shall voluntarily terminate operations or consent to the appointment of a Receiver or Trustee of the Mortgagor or of all or a substantial part of the Mortgagor's assets; (4) If the Mortgagor be adjudicated bankrupt or become insolvent or file a voluntary petition in bankruptcy court or admit in writing its



inability to pay its debts as they become due or make a general assignment for the benefit of creditors; or (5) If all or substantially all of the Mortgaged Property shall be condemned, seized or otherwise expropriated, then and in any such event the Mortgagee may by written notice to the Mortgagor declare the principal of and interest then accrued on the Supplemental Note to be forthwith due and payable whereupon the same shall forthwith become due and payable without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived by the Mortgagor.

### ARTICLE III

#### Remedies

Section 3.1 Repossession. The Mortgagor agrees that in case one or more of the Events of Default shall have occurred and shall not have been remedied, then and in every such case, (a) the Mortgagor shall have the rights and remedies with respect to the Mortgaged Property of a secured party under the Uniform Commercial Code of the State of Michigan; and in accordance therewith and subject to the provisions thereof, the Mortgagee shall have the rights and powers provided in this Supplemental Mortgage and (b) the Mortgagee, by agent or representative, shall have the right and power to take possession of all or any part of the Mortgaged Property and to exclude the Mortgagor and all persons claiming under the Mortgagor wholly therefrom and thereafter to hold, manage and control the same.

At the request of the Mortgagee, the Mortgagor shall promptly deliver or cause to be delivered to the Mortgagee or to an agent or representative designated by the Mortgagee, all property to whose possession the Mortgagee shall at the time be entitled hereunder. For the purposes of delivering possession of the Mortgaged Property, the Mortgagor shall, at its own cost, expense and risk (a) forthwith and in the usual manner (including but not by way of limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any flat car has been interchanged to return the flat car so interchanged), place such Mortgaged Property

upon such storage tracks as the Mortgagee reasonably may designate; (b) permit the Mortgagee to store the Mortgaged Property on such tracks at the risk of the Mortgagor without charge for insurance, rent or storage until such Mortgaged Property has been sold by the Mortgagee, and (c) transport the same to any place on such tracks as the Mortgagee reasonably may determine or to any connecting carrier for shipment, all as directed by Mortgagee.

Section 3.2 Power of Sale. In case one or more of the Events of Default shall have happened and shall not have been remedied, the Mortgagee personally or by agents with or without possession of the Mortgaged Property, (a) may, to the extent permitted by law, sell at one or more sale, as an entirety or in parcels all or any part of the Mortgaged Property, such sale or sales to be made to the highest bidder at public auction in such place or places, and at such time or times and upon such terms as the Mortgagee may fix and briefly specify in the Notice of Sale to be given as hereinafter provided or as may be required by law; or (b) may proceed to protect and insure the rights of the Mortgagee under this Supplemental Mortgage by suit, whether for specific performance of any covenant herein contained or in aid of the execution of any power herein granted, or for the foreclosure of the Original Mortgage as amended by this Supplemental Mortgage and the sale of the Mortgaged Property under the judgment or decree of a court of competent jurisdiction, or for the enforcement of any other right as the Mortgagee shall determine.

Section 3.3 Notice of Sale. Notice of Sale under this Article shall state the time when and the place where the same is to be made and shall contain a brief description of the property to be sold and shall be sufficiently given if mailed to the Mortgagor by registered or certified mail and published once in each of any two successive calendar weeks in a daily newspaper of general circulation in the city where the sale is to be made.

Section 3.4 Delivery to Purchaser. Upon the completion of any sale under this Article, the Mortgagor shall deliver all the property sold to the purchaser or purchasers at such sale on the date of sale

if such property is in the possession of the Mortgagor. If so requested by the Mortgagee or by any purchaser, the Mortgagor shall confirm any such sale or transfer by executing and delivering to such purchaser or purchasers, instruments of conveyance as may be designated in any such request.

Every such sale shall operate to divest all right, title and interest whatsoever of the Mortgagor of, in and to the property so sold and shall be a perpetual bar both at law and in equity against the Mortgagor, all persons claiming the property sold through the Mortgagor, and their successors or assigns.

Section 3.5 Application of Proceeds. The proceeds of any sale of the Mortgaged Property or any part thereof under this Article shall be applied as follows: (a) first to the payment of the cost and expense of such sale including a reasonable compensation to the Mortgagee's agents, attorneys and counsel and all charges, expenses, liabilities and advances incurred or made by the Mortgagee, and to payment of all taxes, assessments, or liens, if any, prior to the lien of the Original Mortgage, as amended by this Supplemental Mortgage; (b) second to the payment in full of the Supplemental Note including interest, and (c) third, the surplus, if any, shall be paid to the Mortgagor, its successors or assigns, or to whoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may indicate.

Section 3.6 Mortgagee May Purchase. At any sale under this Article, the Mortgagee may bid for and purchase the property offered for sale and, upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability therefor.

Section 3.7 Remedies Cumulative. No remedy herein conferred is intended to be exclusive of any other remedy and any such remedy shall be cumulative and shall be in addition to every other remedy herein conferred or now or hereafter existing at law or in equity

or by statute. No delay or omission of the Mortgagee to exercise any right or remedy arising hereunder shall impair any right or remedy or shall be construed to be a waiver of any Event of Default and every rightful remedy given by this Supplemental Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee. The invalidity or unenforceability of any of the remedies herein provided in any jurisdiction shall not in any way effect the rights to the enforcement in such jurisdiction or elsewhere of any of the other remedies herein provided .

#### ARTICLE IV

##### Defeasance

Section 4.1 Payment of Indebtedness. If the Mortgagor shall pay and discharge the entire indebtedness on the Supplemental Note then upon the request of Mortgagor, the Original Mortgage as amended by this Supplemental Mortgage and the liens, rights and interest thereby granted shall cease and become null and void and, at the expense of the Mortgagor, the Mortgagee shall cause satisfaction and discharge of the Original Mortgage, as amended by this Supplemental Mortgage, to be entered upon the record as may be necessary.

#### ARTICLE V

##### Assignment of Lease

Section 5.1 The Mortgagor hereby assigns transfers and sets over unto the Mortgagee as collateral security for the payment of the loan evidenced by the Supplemental Note as aforesaid all of the Lessor's right, title and interest under a certain Lease dated April 19, 1976, between the Mortgagor, as Lessor, and Chicago and Northwestern Transportation Company, as Lessee, providing for the leasing of the Mortgaged Property, including without limitation the right to receive and collect all rentals and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease, whether as rent, indemnity or otherwise (such moneys being hereinafter called the "Payment") and the right to make all waivers and agreements,

to give all notices, to take all action upon the happening of a default as specified in the Lease, and to do any and all other things whatsoever which the Mortgagor, as Lessor, is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Mortgagor hereby irrevocably authorizes and empowers the Mortgagee in its own name or in the name of its nominee or in the name of the Mortgagor to ask, demand, sue for, collect and receive Payments to which the Mortgagor is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

Mortgagor agrees to promptly notify Lessee to make all Payments to which the Mortgagor is or may become entitled to under the Lease directly to the Mortgagee to be deposited in a separate bank account maintained by Mortgagor with Mortgagee and to be administered solely by Mortgagee as provided herein. Mortgagee may release such collected funds to the Mortgagor if no Event of Default is then existing or, in its discretion, may apply such funds in said account to the payment of any indebtedness secured by this Supplemental Chattel Mortgage, such application to be made at such time or times as Mortgagee may determine.

To the extent such application shall be made against the loan evidenced by the Supplemental Note, the Mortgagee will apply all such Payments as prepayments of the Supplemental Note in the manner required for prepayments under Section 1.6 of this Supplemental Mortgage. This assignment is executed only as security and, therefore, shall not subject the Mortgagee to, or transfer or pass or in any way effect or modify the liability of the Mortgagor under the Lease. It being understood and agreed that all obligations of the Mortgagor, as Lessor, to the Lessee under the Lease shall be and remain enforceable by the Lessee only against the Lessor or persons other than the Mortgagee.

In the event that any of the Mortgaged Property shall become subject to any other lease, such lease and all rentals and other sums

payable to or receivable by the Mortgagor thereunder shall be and are hereby assigned unto the Mortgagee as collateral security for the payment of the loan evidenced by the Supplemental Note and shall be subject to the provisions of this Section 5.1. Mortgagor agrees to promptly notify Mortgagee of the existence of any such lease and to execute such instruments as may be requested by Mortgagee to confirm such assignment.

## ARTICLE VI

### Miscellaneous Provisions

Section 6.1 Notices. Any notice provided by this Supplemental Mortgage to be made upon, given or furnished to or filed with the Mortgagee by the Mortgagor shall be sufficient for every purpose hereunder if given or filed in writing to or with the Mortgagee at its principal offices at:

800 Military Street  
Port Huron, Michigan 48061  
Attention: James N. MacTaggart, Vice President

Any notice or other document provided by this Supplemental Mortgage to be given or furnished to or filed with the Mortgagor by the Mortgagee shall be sufficient for every purpose hereunder if in writing and mailed first class, postage prepaid, to the Mortgagor addressed to it at:

3333 Electric Avenue  
Port Huron, Michigan 48060  
Attention: Allen L. Steven, Partner

or at such other address as may have been furnished in writing to the Mortgagee by the Mortgagor.

Section 6.2 Lien; Setoff by Mortgagee. The Mortgagor hereby grants to Mortgagee a continuing lien for all indebtedness of the Mortgagor to the Mortgagee secured hereby upon any and all moneys, securities and other property of the Mortgagor, now or hereafter held or received by or in transit to, the Mortgagee whether for safekeeping, custody, pledge, transmission, collection or otherwise, and also upon any and all deposits and credits of the Mortgagee at any time existing. Upon the occurrence of any Event of Default, Mortgagee is

hereby authorized at any time and from time to time, without notice to Mortgagor, to set off, and apply any or all items hereinabove referred to against all such indebtedness, whether now existing or hereafter arising.

Section 6.3 Construction. This Supplemental Mortgage shall be construed in accordance with the laws of the State of Michigan and the rights and remedies of the parties hereunder shall be determined in accordance with such laws.

This Supplemental Mortgage is intended to be delivered by the Mortgagor to the Mortgagee and accepted by the Mortgagee in the City of Port Huron, State of Michigan.

IN WITNESS WHEREOF, the Mortgagor has caused this instrument to be duly executed on the day and year first above written.

BRS RAILROAD EQUIPMENT ASSOCIATES

By: Allen L. Stevens  
Allen L. Stevens, Partner

STATE OF NEW YORK

COUNTY OF NEW YORK

On this 22nd day of DECEMBER, 1976, before me personally appeared ALLEN L. STEVENS, to me known to be the person described in and who executed the foregoing instrument and he acknowledged the he executed the same as his free act and deed

(SEAL)

Patricia J. Jefferies  
Notary Public, State of  
My Commission expires: 3/30/78  
PATRICIA J. JEFFERIES  
Notary Public, State of New York  
No. 31-4020460  
Qualified in New York County  
Commission Expires March 30, 1978